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October 8, 2021

VIA ECFS

Denise Coca
Chief, International Bureau
Federal Communication Commission
45 L Street, N.E.
Washington, D.C. 20554

Re: *China Telecom (Americas) Corporation*, GN Docket No. 20-109

Dear Ms. Coca:

Pursuant to 47 CFR § 1.1206, China Telecom (Americas) Corporation ("CTA") files this letter to supplement the record regarding the above-captioned proceeding.¹

As CTA has already shown, Section 558(c) of the Administrative Procedure Act ("APA"), 5 USC § 558(c), imposes both procedural and substantive restrictions on the revocation of a license by any agency.² Not only must the licensee be given both notice of the proposed action and an opportunity to "achieve compliance," but the notice must identify "facts or conduct which may warrant the action[.]"³

On June 4, 2021, the National Telecommunications and Information Administration, acting on behalf of several Executive Branch agencies, submitted a letter in GN Docket No. 20-111 relating to Pacific Networks Corp. and ComNet (USA) LLC (together, the "Companies"). A copy of this

¹ See *China Telecom (Americas) Corporation*, Order Instituting Proceedings on Revocation and Termination and Memorandum Opinion and Order, 35 FCC Rcd. 15006, para. 72 (2020) (designating proceeding as "permit-but-disclose").

² APA Section 551(8), 5 USC § 551(8), defines a "license" as including "the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission."

³ Although Section 558 contains exceptions for "willfulness" and emergency revocations, neither exception applies here. GN Docket No. 20-209, *Reply Comments of China Telecom (Americas) Corporation to Order Instituting Proceedings* at 23-28 (filed March 1, 2021) ("CTA Reply Comments").

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letter is attached hereto as Exhibit A.⁴ The June 4 letter argues that no showing of non-compliance is necessary to justify revocation of authorizations under Section 214. It contends that authorizations can be revoked based *solely* on “the national security and law enforcement risks the Commission’s proceeding considers in determining whether the Companies’ Section 214 authorizations continue to serve the public interest.”⁵

The June 4 letter confirms that the Executive Branch agencies seek indiscriminate revocation of the Section 214 authorizations held by *all* companies with controlling stock interests held by the People’s Republic of China, regardless of any “facts or conduct” relating directly to any given company, and based solely on their opinion as to the likely future actions of all such companies. Moreover, even if the Executive Branch’s opinions did constitute a potential ground for revocation, the Commission would still have to afford CTA and other respondents an opportunity to “demonstrate or achieve compliance with all lawful requirements.” The Executive Branch agencies argue that it should not offer any such opportunity, because they do not trust these companies to comply in the future. CTA has stated clearly that it would be willing to consider accepting additional conditions, beyond those now contained in its letter of assurances, that would give the Executive Branch agencies greater visibility into its operations and greater safeguards against any “perceived risks” they have identified, but the agencies have refused even to discuss the matter.

CTA continues to look forward to an expeditious resolution to the proceeding while maintaining its services to American consumers.

Respectfully submitted,

/s/ Andrew D. Lipman

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⁴ GN Docket No. 20-111, Letter from Kathy Smith, Chief Counsel, NTIA, to Denise Coca, Chief, International Bureau, FCC (June 4, 2021) (“June 4 letter”).

⁵ Exhibit A at 2.

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Exhibit A



UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and
Information Administration
Washington, D.C. 20230

June 4, 2021

Ms. Denise Coca
Chief, International Bureau
Federal Communications Commission
45 L Street, N.E.
Washington, DC 20554

Re: Pacific Networks Corp. and ComNet (USA) LLC
GN Docket No. 20-111
ITC-214-20090105-00006 and ITC-214-20090424-00199

Dear Ms. Coca:

This letter responds to certain arguments made by Pacific Networks Corp. (“Pacific Networks”) and ComNet (USA) LLC (“ComNet” and together with Pacific Networks, the “Companies”) in the Companies’ April 28, 2021, response to the Federal Communications Commission’s (“FCC” or “Commission”) March 19, 2021, Order Instituting Proceeding on Revocation and Termination. The interested Executive Branch entities¹ offer the following limited views pursuant to their discretion to communicate information to the FCC. *See, e.g.*, E.O. 13913, §§ 10(h)(ii), 12(a)(i).²

In the November 16, 2020, letter from the interested Executive Branch entities (“Executive Branch Letter”), the Departments of Justice and Homeland Security (collectively, the “Monitoring Agencies”), the agencies responsible for oversight of the Companies’ 2009 Letter of Assurance (“LOA”), assessed that the Government of the People’s Republic of China’s (“PRC” or the “Chinese government”) ownership and control over CITIC Group Corporation (“CITIC”) undermines the Monitoring Agencies’ confidence that any additional mitigation measures would effectively address the risks to law enforcement and national security that have evolved since the licenses were granted.³ The Companies stated in their response that the Monitoring Agencies have not identified any acts of non-compliance under the 2009 LOA.⁴ Although that is accurate, and indeed was noted in the Executive Branch Letter, it misses the relevant points set forth in the

¹ The interested Executive Branch entities for purposes of this response include the Dep’t of Justice (“DOJ”), Dep’t of Homeland Security (“DHS”), Dep’t of Defense, Dep’t of Commerce, Dep’t of State, Dep’t of the Treasury, the Office of the U.S. Trade Representative, and the General Services Administration.

² 85 Fed. Reg. 19643 (Apr. 8, 2020).

³ *See* Letter from Kathy Smith, Chief Counsel, National Telecommunications and Information Administration, U.S. Dep’t of Commerce, to Ms. Denise Coca, Chief, Telecommunications and Analysis Division, International Bureau, Federal Communications Commission, (Nov. 16, 2020), GN Docket No. 20-111, at 10-11 (“Executive Branch Letter”).

⁴ *Pacific Networks Corp. and ComNet (USA) LLC*, Response to Order Instituting Proceeding on Revocation and Termination, GN Docket No. 20-111, ITC-214-20090105, ITC-214-20099424-0199, at 6 (Apr. 28, 2021) (“Response to Revocation Proceeding”).

Executive Branch Letter⁵ that 1) the LOA is no longer adequate to protect the risk posed by the Companies to law enforcement and national security interests; and 2) amending the LOA to add new mitigation measures is inadequate to protect law enforcement and national security interests because the Monitoring Agencies lack confidence that the Companies will comply with additional restrictions if those obligations conflict with the PRC's updated legal requirements, which the entities in the Companies' corporate chain must follow.⁶ In other words, the Companies' compliance with a more-than-decade-old mitigation agreement is not dispositive as to the national security and law enforcement risks the Commission's proceeding considers in determining whether the Companies' Section 214 authorizations continue to serve the public interest.

As set forth in more detail in the Executive Branch Letter, telecommunications companies ultimately owned and controlled by the Chinese government present distinct national security and law enforcement risks to the United States.⁷ Since the letter was submitted, the Office of the Director of National Intelligence has further underscored China's malign behavior in its 2021 Annual Threat Assessment: "China's cyber-espionage operations have included compromising telecommunications firms...and other targets potentially rich in follow-on opportunities for intelligence collection, attack, or influence operations."⁸ While other foreign states may possess similar capabilities, the United States Intelligence Community remains particularly concerned about China, including its access to the U.S. domestic communications infrastructure and networks through entities ultimately owned or controlled by the PRC.⁹

The Companies challenge the application of the PRC laws, including stating that the 2017 National Intelligence Law will not apply to Pacific Networks and ComNet because the National Intelligence Law itself states that the PRC's national security efforts "shall preserve the lawful rights and interests of individuals and organizations."¹⁰ According to the Companies' interpretation, because U.S. law prohibits supporting another country's intelligence gathering activities, the PRC's National Intelligence Law would not apply on its face to whatever extent it conflicted with U.S. law.¹¹ The Companies' argument, however, rests on the dubious proposition

⁵ See Executive Branch Letter, 10.

⁶ See Executive Branch Letter, 6-8 (discussing China's updated intelligence and cybersecurity laws).

⁷ See generally Executive Branch Letter.

⁸ *Annual Threat Assessment of the U.S. Intelligence Community*, Office of the Director of National Intelligence, 8 (Apr. 9, 2021) ("2021 Annual Threat Assessment"), <https://www.dni.gov/files/ODNI/documents/assessments/ATA-2021-Unclassified-Report.pdf>.

⁹ See *Id.* See also Christopher Wray, Dir. Fed. Bureau of Investigation, Address at the Hudson Institute, The Threat Posed by the Chinese Government and the Chinese Communist Party to the Economic and National Security of the United States (July 7, 2020), (transcript available at <https://www.fbi.gov/news/speeches/the-threat-posed-by-the-chinese-government-and-the-chinese-communist-party-to-the-economic-and-national-security-of-the-united-states>).

¹⁰ Response to Revocation Proceeding, 11 (citing to the 2017 National Intelligence Law, Article 8, unofficial translation at <https://www.chinalawtranslate.com/en/national-intelligence-law-of-the-p-r-c-2017/>).

¹¹ *Id.*

that the Chinese government will prioritize U.S. laws over its own laws, and also rests on the entirely faulty assumption that the Chinese government will respect the rule of law to begin with. The U.S. Department of State's 2020 Country Report on China notes that the Chinese government has little regard for the rights and interests of individuals and organizations, including:

politically motivated reprisal against individuals outside the country; the lack of an independent judiciary and Communist Party control over the judicial and legal system; arbitrary interference with privacy; pervasive and intrusive technical surveillance and monitoring; serious restrictions on free expression, the press, and the internet, including physical attacks on and criminal prosecution of journalists, lawyers, writers, bloggers, dissidents, petitioners, and others as well as their family members, and censorship and site blocking; interference with the rights of peaceful assembly and freedom of association, including overly restrictive laws that apply to foreign and domestic nongovernmental organizations.¹²

The Chinese government's majority ownership and control of the Companies through CITIC, combined with Chinese legal obligations on the Companies' parent entities, raise significant concerns about whether the Companies would comply with new mitigation measures that conflict with PRC requests. Any mitigation agreement, no matter how complex or simple, requires a baseline level of trust between the relevant parties to the agreement, because the requisite oversight necessary to assess compliance would not necessarily be adequate to detect intentional, and possibly state-sponsored, efforts to surreptitiously violate mitigation measures. That level of trust is absent here. The Monitoring Agencies simply lack confidence that the Companies' corporate chain will choose to meet their mitigation obligations when faced with an order from the Chinese government.

We continue to support the Commission's efforts to protect and secure the Nation's telecommunications infrastructure, and appreciate this opportunity to provide the further views of the interested Executive Branch entities.

Respectfully submitted,



Kathy Smith
Chief Counsel

¹² *2020 Country Reports on Human Rights Practices: China (Includes Hong Kong, Macau, and Tibet)*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Executive Summary (last accessed on May 10, 2021) available at <https://www.state.gov/wp-content/uploads/2021/03/CHINA-2020-HUMAN-RIGHTS-REPORT.pdf>.